

# EXHIBIT 1

8/26/2020

FTC, et al. v. Thomas Jefferson University, et al  
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Christine M. Hammer

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

-----  
FEDERAL TRADE COMMISSION  
and COMMONWEALTH OF  
PENNSYLVANIA,

Cause No.  
20-01113

Plaintiffs,

v.

THOMAS JEFFERSON UNIVERSITY  
and ALBERT EINSTEIN HEALTHCARE  
NETWORK,

Defendants.

-----  
August 26, 2020

9:00 a.m.

\*\*\*\*HIGHLY CONFIDENTIAL\*\*\*\*

VIDEOTAPED DEPOSITION TAKEN REMOTELY VIA  
ZOOM VIDEOCONFERENCE OF CHRISTINE M. HAMMER

-----  
DIGITAL EVIDENCE GROUP  
1730 M Street, NW, Suite 812  
Washington, D.C. 20036  
(202) 232-0646

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1 Videotaped deposition of CHRISTINE M. HAMMER,  
2 Expert witness in the above-captioned matter, taken  
3 remotely via Zoom videoconference, on, Tuesday July  
4 August 26, 2020, at approximately 10:00 a.m., before  
5 Eileen Mulvenna, CSR/RMR/CRR, Certified Shorthand  
6 Reporter, Certified Merit Reporter and Certified  
7 Realtime Reporter, and Notary Public for the State  
8 of New York.

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1 A P P E A R A N C E S:

2

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21 A L S O P R E S E N T:

22 HENRY MARTE, VIDEOGRAPHER

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1 not to reveal the contents of any documents  
2 selected by counsel.

3 THE WITNESS: All right.

4 I don't believe I did other than  
5 perhaps something that counsel selected, but  
6 I don't actually recall that counsel provided  
7 anything new. I think the documents that are  
8 relied upon in my report are the documents  
9 that I would have reviewed.

10 BY MS. OLIVER:

11 Q. Ms. Hammer, what was the initial  
12 assignment for this engagement?

13 A. The initial assignment is as it is  
14 written, I believe. Let me think. Certainly it was  
15 an efficiencies analysis. I do not recall whether  
16 the initial assignment included failing firm -- the  
17 failing firm defense or not. I just don't recall  
18 that.

19 Q. When do you recall that the failing  
20 firm defense assignment was given to you?

21 A. That's what I don't recall.

22 Q. When do you recall you began working

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1 rebuttal report?

2 A. Yes.

3 Q. Did anyone other than Cornerstone  
4 conduct any analysis that you're relying on in your  
5 report and rebuttal report?

6 A. No.

7 Q. Okay. Ms. Hammer, in your report at  
8 paragraph 4, which is a section dealing with your  
9 qualifications, you indicate that you've served as  
10 an expert providing bankruptcy evaluations.

11 Do you see that? What does -- matters  
12 does this refer to?

13 A. This refers to -- well, actually, a  
14 number of different matters that -- in bankruptcy  
15 court and evaluating the likelihood of a company to  
16 emerge from bankruptcy and advising clients before  
17 they go into bankruptcy as to what their situation  
18 is, you know, is it likely that they need to go into  
19 a bankruptcy protection. So it involves many  
20 things. That's why I used the word "evaluations."

21 Q. So have you represented parties in  
22 bankruptcy court?

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1           A.       I have not represented -- I have not  
2       represented the parties that are in bankruptcy.

3           Q.       Have you had a role representing a  
4       party in a bankruptcy court proceeding?

5           A.       Yes.

6           Q.       How many times?

7           A.       In -- actually in court?

8           Q.       In a bankruptcy court proceeding, yes.

9           A.       In the bankruptcy court, I have  
10       testified in bankruptcy court once.

11          Q.       And what was that matter?

12          A.       That was Temtex versus Temco, I  
13       believe -- and Temco. It's a hyphenated name, and  
14       I'm struggling with the second portion of the name.  
15       So I'll say Temtex, because that part I'm positive  
16       about.

17          Q.       So the one -- you testified in one  
18       matter in bankruptcy court; that's correct?

19          A.       That's correct.

20          Q.       Was the Temco/Temtex matter in 2003?

21          A.       That sounds approximately right.  
22       Without consulting a schedule, I can't be positive.

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1 Q. And you indicated that you have worked  
2 on matters evaluating the likelihood of a company to  
3 emerge from bankruptcy.

4 How many times have you done that?

5 A. I would think perhaps three or four.

6 Q. Do you recall when those matters would  
7 have been?

8 A. They would have been subsequent to the  
9 one in 2003.

10 Q. Are those matters on your résumé?

11 A. No, they are confidential.

12 Q. So they were not matters in which you  
13 presented testimony before a court or a deposition?

14 A. That's correct.

15 Q. Have you ever taken a company through  
16 the bankruptcy or restructuring process?

17 A. No.

18 Q. Have you ever represented a bondholder  
19 group or its bond trustee through an in- or  
20 out-of-court restructuring?

21 A. Give me a moment to think about that.

22 I'm struggling because in the WPPSS,



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1 the Washington Public Power Supply System, matter, I  
2 worked for the Justice Department, not the antitrust  
3 division. And that was -- it had gone through  
4 bankruptcy and the assets needed to be divided, what  
5 few remaining assets there were. So I think that  
6 would also qualify, but I'm not certain.

7 Q. So you were representing a bondholder  
8 group or its bond trustee in that matter?

9 A. Oh, I didn't understand you to say  
10 representing. No, I was working with the federal  
11 government trying to determine how whatever amounts  
12 might be left from that bankruptcy might be  
13 available to be distributed. And I believe  
14 bondholders were a part of the group.

15 Q. Okay. So to answer to my question  
16 have you ever represented a bondholder group or its  
17 bond trustee during an in- or out-of-court  
18 restructuring, the answer is no?

19 A. The answer is no.

20 Q. On how many bankruptcies have you  
21 advised parties in interest or stakeholders?

22 A. Four or five.

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1 Q. And how many in the past ten years?

2 A. I don't know that I've done any, but  
3 I'm going to have to think back to where ten years  
4 ago would be. Let me just -- no, I believe that  
5 since 2010 I've not worked on any bankruptcy  
6 matters.

7 Q. You said you haven't advised a company  
8 through an in- or out-of-court restructuring  
9 process, have you?

10 A. You said in or out of a court. Do you  
11 mean have I advised companies prior to their filing  
12 for bankruptcy?

13 Q. I'm asking --

14 A. I'm not sure about the "in" and "out."

15 Q. -- whether you've taken a company  
16 through a restructuring process, either through the  
17 courts or outside of the courts.

18 A. No.

19 MR. ANDREWS: Ms. Oliver, we've been  
20 going about an hour. Whenever you're ready,  
21 do you think we can take a break?

22 MS. OLIVER: Sure.

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1 Do you want to take a break now,  
2 Ms. Hammer?

3 THE WITNESS: In the next minute or  
4 two. I know you're in the middle of a line  
5 of questions, so why don't you complete that  
6 so that we can take a break.

7 BY MS. OLIVER:

8 Q. You've never evaluated whether a  
9 hospital entity can reorganize successfully in  
10 bankruptcy, have you?

11 A. No.

12 Q. Have you ever developed plans of  
13 reorganization for a health care provider?

14 A. No.

15 Q. In paragraph 4 of your report, you say  
16 bankruptcy work has focused -- your bankruptcy work  
17 has focused on assessing the reliability of  
18 management's profitability and cash flow projections  
19 based on examining historical results and operating  
20 strategic plans.

21 Is that a fair summary of your  
22 bankruptcy experience?

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1 able to successfully emerge from bankruptcy.

2 Q. So I'll just quote it.

3 "It would not be able to reorganize  
4 successfully under Chapter 11 of the Bankruptcy  
5 Act"; is that correct?

6 A. That sounds correct.

7 Q. Do you agree that this is the  
8 guideline set down by the Federal Trade Commission  
9 and the US Department of Justice in the Horizontal  
10 Merger Guidelines for the second element of the  
11 failing firm defense?

12 A. Yes.

13 Q. Have you conducted an analysis of  
14 whether Einstein could successfully reorganize under  
15 Chapter 11 of the Bankruptcy Act?

16 A. No.

17 Q. In your report, at paragraph 217, you  
18 say, "Einstein has not ruled out the possibility  
19 that it could reorganize successfully under  
20 Chapter 11 of the Bankruptcy Act"; is that correct?

21 A. I'm not sure what paragraph --

22 Q. Paragraph 217.

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1 wasn't working.

2 Q. And what would be the key elements of  
3 a reorganization plan for a hospital entity?

4 A. I would think the key elements for a  
5 hospital entity would be the same as I would look at  
6 in my role as a financial and managerial accountant  
7 for any company coming out, just do they have a  
8 business plan -- a strategic plan that is going to  
9 allow them to have more success financially than  
10 they would -- than they had prior to bankruptcy.

11 Q. But you haven't analyzed whether  
12 Einstein could successfully do such a reorganization  
13 in bankruptcy?

14 A. No. I would need Einstein's own  
15 analysis perhaps prepared with their bankruptcy  
16 consultant and then I -- there's nothing to analyze  
17 currently. That's why I say that -- I conclude that  
18 they have not ruled out the possibility that they  
19 could reorganize successfully because they haven't  
20 examined the possibility of entering bankruptcy, to  
21 my knowledge. The record does not indicate -- I've  
22 not seen anything in the record to indicate they

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1 have seriously considered bankruptcy, nor have they  
2 made a plan.

3 Q. But the Merger Guidelines' second  
4 element of the failing firm defense is not whether  
5 the parties have considered a bankruptcy plan, it's  
6 whether they could successfully reorganize; correct?

7 A. That's correct. And Einstein has  
8 provided no data that would allow one to evaluate,  
9 as an accountant, whether or not they could  
10 successfully emerge.

11 Q. So would an accountant be an  
12 appropriate expert to advise a company on a  
13 reorganization plan?

14 A. An accountant would be a very  
15 appropriate person to advise the court on whether  
16 they believed the reorganization plan is likely to  
17 be successful.

18 Q. But an accountant would not be able to  
19 put together a reorganization plan for a hospital  
20 system.

21 A. I would think that they would be one  
22 of the advisors, but they would not be the sole

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1 included in your report; correct?

2 A. I will offer an opinion on the period  
3 from 2018 to the present as historical numbers. And  
4 in the forecasted numbers, I'll be looking back to  
5 2016.

6 Q. Okay. You also haven't analyzed  
7 Einstein's financial viability as a standalone  
8 entity beyond FY 2021; is that correct?

9 A. That's correct as of today.

10 Q. Do you have plans to look at that at  
11 any point in the future before the preliminary  
12 injunction hearing?

13 A. Well, assuming the preliminary  
14 injunction hearing is in September, as I understand  
15 it's going to be now, I will not because I doubt  
16 there would be any additional financial information  
17 available to me.

18 But as I pointed out in my report, I  
19 don't even have year-end June 30th, 2020. So if  
20 that information were to become available, I would  
21 most certainly want to review it. Or if the hearing  
22 were postponed and then the information became

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1 available, I would continue to evaluate all the  
2 information that's available to me.

3 Q. Okay. So you don't know whether  
4 Einstein's days cash on hand have increased or  
5 decreased since 2015 year over year on a trend  
6 basis, do you?

7 A. I can picture an analysis that was  
8 done and -- let me just check on my own thing to be  
9 sure that it matches with what I'm picturing.

10 (Pause.)

11 A. You asked about the days cash on hand?

12 Q. I asked about -- I asked "You don't  
13 know whether Einstein's days cash on hand had  
14 increased or decreased since 2015 year over year on  
15 a trend basis"?

16 A. I don't -- as I sit here today, I do  
17 not recall that.

18 Q. Right.

19 You haven't analyzed Einstein's  
20 capital expenditures as a percentage of depreciation  
21 or amortization; correct?

22 A. That's correct. I've not looked at



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1 STATE OF NEW YORK )  
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I, EILEEN MULVENNA, CSR/RMR/CRR, a  
Certified Court Reporter, Registered Merit Reporter,  
Certified Realtime Reporter, and Notary Public in  
and for the State of New York, do hereby certify:

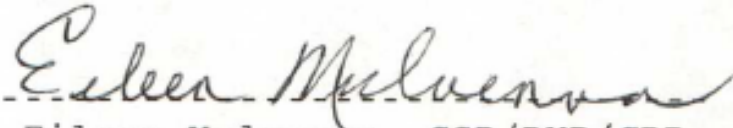
That I reported the taking of the  
deposition of the witness, CHRISTINE M. HAMMER,  
commencing on the 26th day of August, 2020, at the  
hour of 10:00 a.m.

That prior to being examined, the witness  
was duly sworn by me to testify to the truth, the  
whole truth, and nothing but the truth.

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcript of said deposition is a  
complete, true and accurate transcription of my  
said shorthand notes taken down at said time, and  
that a request has been made to review the  
transcript.

I further certify that I am not a relative  
or employee of an attorney or counsel of any of the  
parties, nor a relative or employee of any attorney  
or counsel involved in said action, nor a person  
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto  
set my signature this 26th day of August, 2020.

  
Eileen Mulvenna, CSR/RMR/CRR

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1 Christine Hammer, c/o  
FEDERAL TRADE COMMISSION

2 600 Pennsylvania Avenue, NW --  
Washington, DC 20580

3  
4 Case: FTC, et al. v. Thomas Jefferson University, et al.  
Date of deposition: August 26, 2020  
5 Deponent: Christine Hammer

6  
7 Please be advised that the transcript in the above  
8 referenced matter is now complete and ready for signature.  
9 The deponent may come to this office to sign the transcript,  
10 a copy may be purchased for the witness to review and sign,  
11 or the deponent and/or counsel may waive the option of  
12 signing. Please advise us of the option selected.  
13 Please forward the errata sheet and the original signed  
14 signature page to counsel noticing the deposition, noting the  
15 applicable time period allowed for such by the governing  
16 Rules of Procedure. If you have any questions, please do  
17 not hesitate to call our office at (202)-232-0646.

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